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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION

6 RAKESH DHINGRA,

7 Plaintiff,

8 vs.

9 USA,

10 Defendant.
11

Case No: C 18-06627 SBA

Related to:

CR 01-40144 SBA

C 16-03803 SBA

C 16-06827 SBA

C 18-03600 SBA

ORDER DISMISSING ACTION

12 This action is the latest in a series of pro se lawsuits filed by Plaintiff Rakesh
13 Dhingra (“Dhingra”) to invalidate his 2002 criminal conviction for using the internet to
14 solicit sexual activity from a minor in violation of 18 U.S.C. § 2422(b). Pursuant to 28
15 U.S.C. § 1915(e)(2), the Court DISMISSES the action.

16 **I. BACKGROUND¹**

17 **A. THE UNDERLYING CRIMINAL ACTION**

18 In July 2000, Dhingra, who was then 40 years old, contacted a minor girl, Eliina
19 Belenkiy (“Belenkiy”), using the Internet-based America Online instant messenger (“IM”)
20 service. Over the course of several days, Dhingra and the minor engaged in extensive IM
21 conversations that included sexual topics. The minor stated on multiple occasions that she
22 was only 14 years old, and Dhingra repeatedly acknowledged her stated age.

23 Dhingra and Belenkiy arranged to meet at a local community college on July 10,
24 2000. During that in-person encounter, Dhingra engaged in sexual activity with the minor.
25 Belenkiy reported the incident to a teacher, and then, with the teacher’s urging, to local law
26 enforcement officials. Local law enforcement officials arrested Dhingra after covertly

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28 ¹ The parties are familiar with the facts and allegations of the prior actions, which
are summarized herein only to the extent they are pertinent to the resolution of the action.

1 arranging a second meeting between him and the minor. On July 14, 2000, local law
2 enforcement officials contacted the Federal Bureau of Investigations (“FBI”), including
3 Agent Charles Esposito (“Agent Esposito”), to further investigate the offense.

4 In 2001, the United States charged Dhingra with one count of using the internet to
5 solicit sexual activity from a minor in violation of 18 U.S.C. § 2422(b). United States v.
6 Dhingra, No. 01-cr-40144 SBA. In 2002, a jury found Dhingra guilty of that offense, and
7 the Court imposed a sentence of 24 months in custody and 3 years of supervised release.
8 Dhingra appealed his conviction to the Ninth Circuit, which affirmed the judgment in a
9 published decision. United States v. Dhingra, 371 F.3d 557 (9th Cir. 2004).

10 **B. THE FIRST CIVIL ACTION**

11 In July 2016, Dhingra filed suit against the United States, along with an application
12 to proceed in forma pauperis (“IFP”). Dhingra v. United States, No. 16-cv-03803 SBA
13 (hereafter, “First Civil Action”). In a single pleading, he brought both a civil complaint for
14 damages and a petition for writ of error coram nobis.

15 In that action, Dhingra alleged that the “purported minor” victim of his criminal
16 offense—Belenkiy—was actually an adult “undercover FBI Agent/Informer.” He further
17 alleged that Agent Esposito “sent a baby faced adult” to meet him as part of a “cyber squad
18 operation . . . to catch persons who had been actively looking for illegal sexual conduct
19 with minors.” According to Dhingra, the FBI undertook this operation to falsely arrest,
20 prosecute, and convict him. He claimed that the FBI fabricated evidence regarding the
21 “fictitious minor” and committed perjury by presenting that fiction to a jury at trial. As
22 relief, Dhingra sought damages and an order overturning his criminal conviction.

23 In September 2016, the Court issued an order dismissing the First Civil Action. The
24 Court found that the civil claims were barred by the principles enunciated in Heck v.
25 Humphrey, 512 U.S. 477 (1997). Regarding the petition for writ of error coram nobis, the
26 Court found that Dhingra did not satisfy the requirements for such extraordinary relief.
27 Specifically, he failed to demonstrate due diligence in pursuing his claim and failed to
28 provide facts supporting his assertion that the victim of his offense was an adult FBI agent.

1 Dhingra filed a motion for reconsideration, which the Court denied. In November
2 2016, Dhingra filed a notice of appeal, along with an application to proceed IFP on appeal.
3 The Court certified the appeal as frivolous and denied the application to proceed IFP.
4 Thereafter, the Ninth Circuit dismissed the appeal as frivolous. Case No. 16-17198.

5 **C. THE SECOND CIVIL ACTION**

6 In November 2016, Dhingra filed suit against Belenkiy, along with an application to
7 proceed IFP. Dhingra v. Belenkiy, No. 16-cv-06827 SBA (hereafter, “Second Civil
8 Action”). The factual allegations were nearly identical to those set forth in the First Civil
9 Action. Specifically, Dhingra alleged that Agent Esposito was running a “cyber squad
10 operation” and “using FBI Agent/Informer . . . Eliina Belenkiy, an adult with baby faced
11 appearance as bait to catch persons who had been actively looking for illegal sexual contact
12 with minors.” However, the Second Civil Action alleged that Belenkiy had fabricated
13 evidence and committed perjury. Again, Dhingra sought damages and an order overturning
14 his criminal conviction.

15 In March 2017, the Court issued an order dismissing the Second Civil Action, again
16 finding that Dhingra’s claims were barred by Heck. Dhingra filed several motions for
17 reconsideration and to alter or amend the judgment, which the Court denied. He did not file
18 an appeal. However, shortly after dismissal of the Second Civil Action, Dhingra filed a
19 second petition for writ or error coram nobis in 01-cv-40144 SBA. The petition is pending.

20 **D. THE INSTANT CIVIL ACTION²**

21 On October 31, 2018, Dhingra filed a class action complaint against the United
22 States, Dkt. 1, along with an application to proceed IFP, Dkt. 2. In the original complaint,
23 he sought to represent “anyone” indicted or convicted for violation of § 2422(b) under
24 circumstances involving, inter alia, a “fictitious” minor acting at the direction of “law
25 enforcement.” Though the precise nature of Dhingra’s cause(s) of action was not entirely
26 clear, the complaint sought a declaration invalidating any indictment and/or conviction for
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28 ² In June 2018, Dhingra filed a class action complaint against Esposito and Belenkiy.
Case No. 18-cv-03600-SBA. He voluntarily dismissed the action in September 2018.

1 violation of § 2422(b) wherein certain facts—generally corresponding to the facts
2 underlying his conviction—are implicated. Upon sua sponte referral from Magistrate Judge
3 Ryu, the action was related to the underlying criminal and prior civil actions, resulting in
4 reassignment of the action to this Court on December 19, 2018. See Dkt. 10.

5 On December 26, 2018, Dhingra filed a motion for a temporary restraining order and
6 preliminary injunction, wherein he sought an order requiring the United States to restore his
7 passport credentials. Dkt. 12. He stated that the State Department had revoked his passport
8 and instructed him to apply for a new one due to his criminal conviction in 01-cv-40144.
9 He further stated that any new passport will be marked “sex offender,” which will prevent
10 him from entering other countries. Dhingra claimed that preliminary injunctive relief was
11 warranted because law enforcement officials had committed perjury and obstruction of
12 justice in prosecuting the underlying criminal action, rendering his conviction invalid.

13 On December 27, 2018, the Court issued an order denying Dhingra’s motion for a
14 temporary restraining order and preliminary injunction on several grounds. Dkt. 13. As is
15 pertinent here, the Court found that Dhingra failed to show a likelihood of success on the
16 merits of his action because, as a pro se litigant, he cannot bring a class action. The Court
17 further found that, to the extent Dhingra’s claims are predicated on alleged improprieties
18 relating specifically to *his* criminal prosecution, the Ninth Circuit and this Court had
19 previously rejected such claims in the prior actions.

20 On December 28, 2018, Dhingra filed a motion to amend or alter the Court’s order
21 denying a temporary restraining order and preliminary injunction. Dkt. 14. On January 7,
22 2019, he filed a supplement to the motion to amend or alter the Court’s order, Dkt. 18, and
23 noticed the motion for hearing on February 13, 2019, Dkt. 17.

24 In the meantime, on January 2, 2019, Dhingra filed an Amended Complaint, wherein
25 he restyles the action as one brought solely on his own behalf. Dkt. 15. The allegations of
26 the Amended Complaint are otherwise similar to the allegations of the original complaint.
27 As relief, he now seeks an order invalidating his indictment and conviction for violation of
28 § 2422(b), restoration of his rights, and such other relief as the Court deems appropriate.

1 **II. LEGAL STANDARD**

2 A court may authorize the commencement of an action without prepayment of fees
3 by a litigant who demonstrates that he is unable to pay. 28 U.S.C. §1915(a)(1). The Court
4 “shall dismiss” such an action, however, if it determines that the action (i) is frivolous or
5 malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary
6 relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); see
7 also Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“It is also clear that
8 section 1915(e) not only permits but *requires* a district court to dismiss an in forma
9 pauperis complaint that fails to state a claim.”) (emphasis added).

10 **III. DISCUSSION**

11 The Court finds—as it did in the prior civil actions—that Dhingra’s claims are
12 barred by Heck. Under Heck, any claim that necessarily implies the invalidity of a prior
13 criminal conviction is barred unless the conviction has been reversed, expunged, or
14 otherwise declared invalid. 512 U.S. at 486-87. Here, Dhingra attacks his underlying
15 conviction on various grounds. The action hinges on allegations that his arrest,
16 prosecution, and conviction constitute a “mis-use or corruption” of § 2422(b) because the
17 victim of the offense was a “fictitious” minor acting at the direction of law enforcement
18 officials. Dhingra seeks a declaration invalidating his conviction, which has not been
19 vacated. Accordingly, the action is DISMISSED without prejudice to renewal if and when
20 Dhingra succeeds in vacating his criminal conviction.³

21 The Court notes that Dhingra has filed three frivolous civil actions (and a prior
22 unsuccessful petition for writ of error coram nobis) based on the same set of facts. The
23 Court warns that such litigation abuse will not be tolerated and may result in the imposition
24 of sanctions and/or filing restrictions should Dhingra persist in pursuing meritless IFP
25 actions. See Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057, 1061 (9th Cir.

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27 ³ To the extent Dhingra seeks an order vacating his criminal conviction, such relief
28 will issue a separate order on Dhingra’s second, pending petition in Case No. 01-cr-40144.

2014) (“Federal courts can ‘regulate the activities of abusive litigants by imposing carefully tailored restrictions under . . . appropriate circumstances.’”) (quoting De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990)).

IV. CONCLUSION

For the reasons stated above,

IT IS HEREBY ORDERED THAT:

1. The instant action is DISMISSED.

2. Dhingra’s application to proceed IFP, Dkt. 2, and motion for permission to e-file, Dkt. 6, are DENIED as moot. Dhingra’s motion to amend or alter the order denying preliminary injunctive relief is also DENIED as moot. See Dex Media W., Inc. v. City of Seattle, 696 F.3d 952, 956 n.1 (9th Cir. 2012) (review of order denying preliminary injunctive relief “would have no practical consequences” after decision on the merits).

3. The Court certifies that any appeal taken from this order will not be in good faith within the meaning of 28 U.S.C. § 1915(a)(3).

4. The Clerk shall close the file and terminate any pending matters.

IT IS SO ORDERED.

Dated: 1/17/2019


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge